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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JAMES L. JACKSON,

12 Petitioner,

Civil No. 11-0276 WQH (WMc)

13  
14 v.

15 UNKNOWN,

16  
17 Respondent.  
18

**ORDER DENYING IN FORMA  
PAUPERIS APPLICATION AND  
DISMISSING CASE WITHOUT  
PREJUDICE AND WITH LEAVE TO  
AMEND**

19  
20 Petitioner, a state prisoner proceeding pro se, has not paid the \$5.00 filing fee and has  
21 filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request  
22 to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).

23 **MOTION TO PROCEED IN FORMA PAUPERIS**

24 The request to proceed in forma pauperis is DENIED because Petitioner has not provided  
25 the Court with sufficient information to determine Petitioner's financial status. A request to  
26 proceed in forma pauperis made by a state prisoner must include a certificate from the warden  
27 or other appropriate officer showing the amount of money or securities Petitioner has on account

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1 in the institution. Rule 3(a)(2), 28 U.S.C. foll. § 2254; Local Rule 3.2. Petitioner has failed to  
 2 provide the Court with the required Prison Certificate.

### 3 **FAILURE TO NAME PROPER RESPONDENT**

4 Review of the Petition reveals that Petitioner has failed to name a proper respondent. On  
 5 federal habeas, a state prisoner must name the state officer having custody of him as the  
 6 respondent. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996) (citing Rule 2(a), 28  
 7 U.S.C. foll. § 2254). Federal courts lack personal jurisdiction when a habeas petition fails to  
 8 name a proper respondent. *See id.*

9 The warden is the typical respondent. However, “the rules following section 2254 do not  
 10 specify the warden.” *Id.* “[T]he ‘state officer having custody’ may be ‘either the warden of the  
 11 institution in which the petitioner is incarcerated . . . or the chief officer in charge of state penal  
 12 institutions.’” *Id.* (quoting Rule 2(a), 28 U.S.C. foll. § 2254 advisory committee’s note). If “a  
 13 petitioner is in custody due to the state action he is challenging, ‘[t]he named respondent shall  
 14 be the state officer who has official custody of the petitioner (for example, the warden of the  
 15 prison).’” *Id.* (quoting Rule 2, 28 U.S.C. foll. § 2254 advisory committee’s note).

16 A long standing rule in the Ninth Circuit holds “that a petitioner may not seek [a writ of]  
 17 habeas corpus against the State under . . . [whose] authority . . . the petitioner is in custody. The  
 18 actual person who is [the] custodian [of the petitioner] must be the respondent.” *Ashley v.*  
 19 *Washington*, 394 F.2d 125, 126 (9th Cir. 1968). This requirement exists because a writ of  
 20 habeas corpus acts upon the custodian of the state prisoner, the person who will produce “the  
 21 body” if directed to do so by the Court. “Both the warden of a California prison and the Director  
 22 of Corrections for California have the power to produce the prisoner.” *Ortiz-Sandoval*, 81 F.3d  
 23 at 895.

24 Here, Petitioner has not named a Respondent. In order for this Court to entertain the  
 25 Petition filed in this action, Petitioner must name the warden in charge of the state correctional  
 26 facility in which Petitioner is presently confined or the Director of the California Department  
 27 of Corrections. *Brittingham v. United States*, 982 F.2d 378, 379 (9th Cir. 1992) (per curiam).


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**CONCLUSION**

Accordingly, the Court **DENIES** Petitioner's motion to proceed in form pauperis and **DISMISSES** the Petition without prejudice and with leave to amend. To have the case reopened, Petitioner must, **no later than May 11, 2011**: (1) pay the \$5.00 filing fee **OR** submit adequate proof of his inability to pay the fee; **AND** (2) file a First Amended Petition that cures the pleading deficiencies outlined in this Order. *The Clerk of Court is directed to mail Petitioner a blank motion to proceed in forma pauperis form and a blank First Amended Petition form together with a copy of this Order.*

**IT IS SO ORDERED.**

DATED: February 25, 2011

  
**WILLIAM Q. HAYES**  
United States District Judge